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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF MICHIGAN

10 TENGFEI LONG

11 Plaintiff

12 Against

13
14 UNITED STATES CITIZENSHIP
15 AND IMMIGRATION SERVICES,

16 Defendant
17

Case No.:

COMPLAINT

18 DESCRIPTION OF ACTION

- 19
20 1. This is an action brought by Tengfei Long against the United States
21 Citizenship And Immigration Services (USCIS) to compel a decision on an
22 unreasonably delayed request for immigration benefits.
23

24 JURISDICTION

- 25 2. This being a civil action against the United States arising under the
26 Mandamus Act, 28 U.S.C. § 1361, and the Administrative Procedure Act, 5
27

1 U.S.C. § 701 et seq., both laws of the United States, original jurisdiction over
2 this matter is vested in this Court by 28 U.S.C. § 1331.
3

4 **DESCRIPTION OF PARTIES**

- 5 3. Tengfei Long is a citizen and national of China, lawfully residing in Oakland
6 County, Michigan. His A number is 219626468.
7
- 8 4. USCIS is an agency of the United States, within the Department of Homeland
9 Security, to which the authority to for adjusting the status of noncitizens in the
10 United States to permanent resident has been delegated. It resides in the
11 District of Columbia and the state of Maryland.
12

13 **BRIEF STATEMENT OF RELEVANT FACTS**

- 14 5. On October 2, 2020, Tengfei Long filed a Form I-485, Application for Adjustment
15 of Status, to adjust his U.S. immigration status to alien lawfully admitted for
16 permanent residence (permanent resident) as the derivative of his wife's
17 employment based application. His application was assigned File No.
18 MSC2190137616 and his USCIS A number is 219626468.
19
- 20 6. Although his wife's application has been approved, Mr. Long's continues to be
21 pending with the USCIS's Detroit Field Office.
22
- 23 7. On February 4, 2022, USCIS sent Tengfei Long a request for certain evidence
24 pertaining to his application to which he promptly responded.
25
- 26 8. Since that time despite, repeated requests, Tengfei Long has received no further
27 information pertaining to his application save that the USCIS is still working on
28 it.

1 9. This delay has adversely affected Mr. Long's welfare as well as his health.

2 10. First, given that USCIS also denied his application for advance parole, he has
3 suffered an inability to travel interntionally.
4

5 11. This has adversely affected his welfare because since he has been able to visit
6 his father and any of my close relatives (20+ in total) for almost 7 years.

7 12. Since Mr. Long was last able to visit China, has father has develped serious
8 diabetes, went through a brain tumor surgery and had a severe fractured right
9 arm(which will only have half of the original strength for the rest of his life).
10

11 13. As his father's only son, Mr. Long wasn't able to stay by his side for any of these
12 difficult times.

13 14. Mr. Long's father just had his 60th birthday 6 months ago and again, Mr. Long
14 wasn't able to spend it with him.
15

16 15. Mr. Long's father applied for a B2 visa in 2016 and his application was stuck in
17 administrative processing for over a year before beig withdrawn, so he can't visit
18 Mr. Long in the US either.
19

20 16. While his mother does have a B2 visa, she's not able to travel much as she needs
21 to look after Mr.Long's father.

22 17. This separation from his family in general, and particularly his inability to
23 assist, or even comfort his father by visiting in his time of need, substantially
24 impacts upon Mr. Long's personal welfare.
25

26 18. In fact, the delay in this case even adversely affects Mr. Long's health, as well as
27 that of his wife.
28

1 19. The stress caused by the situation has negatively impacted Mr. Long's life.

2 20. There have been many times that Mr. Long felt that he needed professional help
3 to deal with the mental stress of waiting for a decision on his application.
4

5 21. In fact, he hasn't been able to have a single good night's sleep in the past year.

6 22. Every day, before going to bed and right after waking up, the concern of his
7 application has always been the last and first thing on Mr. Long's mind.
8

9 **CAUSE OF ACTION**

10 23. The government owes a non-discretionary duty to applicants for adjustment to
11 act upon their application in a reasonable time. 5 U.S.C. § 555(b).

12 24. It is the sense of Congress that the processing of an immigration benefit
13 application should be completed not later than 180 days after the initial filing
14 of the application. 8 U.S.C. § 1571(b).
15

16 25. Even a non-binding deadline may still be an "indication of the speed with
17 which" Congress 'expects the agency to proceed.' *Hulli*, 549 F. Supp. 3d at 101
18 (quoting *In re United Mine Workers*, 190 F.3d at 549)." *Ramirez v. Blinken*,
19 594 F. Supp. 3d 76, 94 (D.D.C. 2022).
20

21 26. The over three years which it has taken the USCIS to process Mr. Long's
22 application for adjustment of status is unreasonable and well beyond the 180
23 days that it is the sense of Congress that such application should be completed
24 in.
25

26 27. In determining that the delay has been sufficiently egregious to warrant the
27 remedy of mandamus, courts usually consider the six-factor standard—the so-
28

called "*TRAC* factors"—established in *Telecomms. Research and Action Ctr. (TRAC) v. FCC*, 750 F.2d 70, 79-80, 242 U.S. App. D.C. 222 (D.C. Cir. 1984).

Those factors are as follows:

the time agencies take to make decisions must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

TRAC, 750 F.2d at 79-80 (citations and internal quotation marks omitted)

28. Here the rule of reason has been provided by the USCIS, which has indicated that it 80% of employment based applications for adjustment of status are completed in 22.5 months at its Detroit Field Office.

29. Since over 3 yers have passed since his application has been filed, the most important factor, the rule of reason, tips sharply in favor of Mr. Long

30. The remaining factors either also tip sharply in favor of Mr. Log, or, at worst, are neutral.

31. Factor (2): Congress has provided an indication of the speed with which it expects the agency to proceed in the enabling statute, to wit, 8 U.S.C. § 1571(b), providing that the processing of an immigration benefit

1 application should be completed not later than 180 days after the initial filing
2 of the application.

3
4 32. Inasmuch as nearly 3 years have passed since the filing of his application for
5 adjustment of status, this factor tips sharply in Mr. Long's
6 favor.

7
8 33. Factor (3): Mr. Long's health and welfare is very much at stake here for the
9 reasons stated above.

10 34. Factor (4): there does not appear to be any agency activities of a higher or
11 competing priority which adjudicating Mr. Long's application would affect.
12 Therefore, this factor is neutral.

13
14 35. Factor (5) tips sharply in favor of Mr. Long. The interest which is prejudiced
15 by delay is not merely economic but goes to Mr. Long's health and welfare as
16 discussed above.

17 36. Finally Factor (6) is neutral.

18
19 37. Inasmuch as 4 of the TRAC factors, including the most important one, tip
20 sharply towards Mr. Long, while the remaining are neutral, therefore
21 application of the TRAC factors here indicate that relief should be granted.

22
23 38. This Court has jurisdiction over any action in the nature of mandamus to
24 compel an officer or employee of the United States or any agency thereof to
25 perform a duty owed to the plaintiff. 28 U.S.C. § 1361.

26 39. Further, this Court shall compel agency action unlawfully withheld or
27 unreasonably delayed. 5 U.S.C. § 706(1).
28

RELIEF REQUESTED

Wherefore it is respectfully requested that the Court compel defendant USCIS to issue or refuse Tengfei Long's applicatio for adjustment of status forthwith.

Respectfully submitted October 9, 2023.

/s/ Michael E. Piston

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